

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DIANE W. HOOKS and U.S. POSTAL SERVICE,
POST OFFICE, Dawson, GA

*Docket No. 02-1436; Submitted on the Record;
Issued January 14, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, WILLIE T.C. THOMAS,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

On August 27, 1994 appellant, then a 43-year-old letter carrier, filed a claim for a traumatic injury to her right knee, sustained on August 24, 1994 when she stepped out of her postal vehicle. The Office accepted that she sustained a temporary aggravation of a right medial meniscus tear and later authorized a total knee replacement, which was performed on July 28, 1995 by Dr. John I. Waldrop, a Board-certified orthopedic surgeon.

On May 2, 1995 appellant was involved in a motor vehicle accident while going home from medical treatment for her employment injury. The Office accepted that she sustained a cervical spine strain and a back strain.

Following her total knee replacement and a manipulation of her knee under general anesthesia on November 8, 1995 appellant returned to limited duty on March 1, 1996. By decision dated May 22, 1996, the Office found that this position at the employing establishment represented appellant's wage-earning capacity and reduced her compensation to zero.

Appellant again stopped work on November 21, 1996 and on November 30, 1996 filed a claim for a recurrence of disability related to her August 24, 1994 employment injury. The Office resumed payment of compensation for temporary total disability on November 22, 1996.

The Office of Personnel Management approved appellant's application for disability retirement effective February 19, 1997. Appellant elected to receive benefits under the Federal Employees' Compensation Act.

On August 6, 1997 appellant underwent further surgery on her right knee, described as a revision of her total knee arthroplasty and lysis of adhesions.

On September 13, 1999 the Office referred appellant, prior medical reports and a statement of accepted facts to Dr. Robert W. Moore, Jr., a Board-certified orthopedic surgeon, for an evaluation of her condition and her ability to work. He set forth work tolerance limitations on September 29, 1999 and in a November 1, 1999 report, concluded that it was medically probable that the cervical and lumbar strains appellant sustained in 1995 had resolved.

On November 16, 1999 the Office issued a proposal to terminate medical benefits for appellant's cervical and lumbar spine conditions.

On November 30, 1999 the employing establishment offered appellant a position as a modified distribution clerk. Appellant rejected this offer on December 1, 1999 stating that she was not physically and medically able to perform it and that she had this position before November 21, 1996.

By decision dated December 23, 1999, the Office terminated appellant's medical benefits for her lumbar and cervical spine conditions and also found that she had not sustained a consequential left knee condition.

By letter dated January 4, 2000, appellant requested a hearing.

By letter dated February 2, 2000, the Office advised appellant that her reasons for not accepting the employing establishment's offer were unacceptable and allotted her 15 days to accept the offer or have her compensation terminated.

By decision dated February 23, 2000, the Office terminated appellant's compensation effective February 26, 2000 on the basis that she failed to accept an offer of suitable work. The Office found that appellant continued to be entitled to medical benefits for her right knee condition.

By decision dated January 10, 2001, an Office hearing representative found that the Office properly terminated appellant's medical benefits for cervical and lumbar spine conditions and that the medical evidence did not support a consequential left knee condition.

By letter dated March 15, 2001, appellant requested reconsideration, stating that her left knee condition was consequential to her right knee condition and that she was not able to hold any job. Appellant submitted a February 6, 2001 report from Dr. Robert S. Pilcher, a Board-certified orthopedic surgeon, stating that she complained of pain and swelling of her left knee, that an MRI about a year earlier showed some meniscal degeneration and early degenerative joint disease and that examination showed limited motion, stable ligaments and a mild to moderate effusion.

By decision dated July 24, 2001, the Office found that the additional evidence was immaterial and not sufficient to warrant review of its prior decisions.

By letter dated January 2, 2002, appellant requested reconsideration, contending that the medical evidence showed that her left knee condition was consequential, that her neck and back conditions had not resolved and that she was unable to work.

Appellant submitted additional medical evidence. In a report dated August 6, 2001, Dr. Krishna Patel set forth a history of a motor vehicle accident four days earlier and of a back problem in the past on and off. He diagnosed an upper back strain, supraspinatus strain and shoulder strain. In a report dated October 1, 2001, Dr. Pilcher stated that appellant had a new problem with her neck after an August 3, 2001 motor vehicle accident. He stated that appellant had gotten over her cervical spine problems from her 1995 motor vehicle accident. In a report dated October 25, 2001, Dr. Pilcher stated that x-rays showed progressive arthritis of appellant's left knee. In a report dated January 9, 2002, he described a left total knee arthroplasty he performed that day.

By decision dated February 25, 2002, the Office found that appellant's letter requesting reconsideration was cumulative and duplicative of issues addressed by prior decisions and that the additional medical evidence she submitted was irrelevant and immaterial because the case was no longer a medical issue. The Office refused to reopen appellant's case for further review of the merits of her claim.

The only Office decisions before the Board on this appeal are the Office's February 25, 2002 and July 24, 2001 decisions finding that appellant's applications for review were not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on January 10, 2001 and the filing of appellant's appeal on April 22, 2002, the Board lacks jurisdiction to review the merits of appellant's claim.¹

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

“The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease, or increase the compensation awarded; or

(2) award compensation previously refused or discontinued.”

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by advancing a relevant legal argument not previously considered by the Office or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim. Evidence that repeats or duplicates evidence already in the case record has

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board must be filed within one year of the date of the Office's final decision being appealed.

no evidentiary value and does not constitute a basis for reopening a case.² Evidence that does not address the particular issue involved does not constitute a basis for reopening a case.³

Neither of appellant's requests for reconsideration showed that the Office erroneously applied or interpreted a specific point of law, nor did they advance a relevant legal argument not previously considered by the Board. Instead they consisted of appellant's interpretation of the medical evidence.

The new medical evidence appellant submitted with her requests for reconsideration was not relevant. Although this evidence showed that appellant had a left knee condition for which she underwent a total knee arthroplasty, none of the reports indicated that the left knee condition was consequential to appellant's right knee condition or in any way related to her employment. Reports from Drs. Patel and Pilcher reflected an upper back or cervical strain, but Dr. Pilcher's October 1, 2001 report attributed this condition to a motor vehicle accident on August 3, 2001 and indicated that appellant had gotten over her cervical spine problems related to her 1995 motor vehicle accident. These reports lend no support to appellant's contention that her cervical spine strain from her 1995 injury had not resolved. None of the new medical evidence was relevant to appellant's contentions.

The February 25, 2002 and July 24, 2001 decisions of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
January 14, 2003

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Member

A. Peter Kanjorski
Alternate Member

² *Eugene F. Butler*, 36 ECAB 393 (1984).

³ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).